

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AUTHORS GUILD, *et al.*, individually and on
behalf of others similarly situated,

Plaintiffs,

v.

OPENAI INC., OPENAI OPCO LLC, OPENAI
GP LLC, OPENAI, LLC, OPENAI GLOBAL
LLC, OAI CORPORATION LLC, OPENAI
HOLDINGS LLC, OPENAI STARTUP FUND I
LP, OPENAI STARTUP FUND GPI LLC,
OPENAI STARTUP FUND MANAGEMENT
LLC, and MICROSOFT CORPORATION,

Defendants.

JONATHAN ALTER, *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

OPENAI, INC., OPENAI GP, LLC, OPENAI,
LLC, OPENAI OPCO LLC, OPENAI GLOBAL
LLC, OAI CORPORATION, LLC, OPENAI
HOLDINGS, LLC, and MICROSOFT
CORPORATION,

Defendants.

THE NEW YORK TIMES COMPANY,

Plaintiff,

v.

MICROSOFT CORPORATION, OPENAI, INC.,
OPENAI LP, OPENAI GP, LLC, OPENAI, LLC,
OPENAI OPCO LLC, OPENAI GLOBAL LLC,
OAI CORPORATION, LLC, OPENAI
HOLDINGS, LLC,

Defendants.

Case No.: 1:23-cv-08292-SHS-OTW

Hon. Sidney H. Stein

(Hon. Ona T. Wang)

**DEFENDANTS' [PROPOSED] ORDER
FOR DEPOSITION COORDINATION**

Case No.: 1:23-cv-10211-SHS-OTW

Hon. Sidney H. Stein

(Hon. Ona T. Wang)

**DEFENDANTS' [PROPOSED] ORDER
FOR DEPOSITION COORDINATION**

Case No. 1:23-cv-11195-SHS
(consolidated)

Hon. Sidney H. Stein

(Hon. Ona T. Wang)

**DEFENDANTS' [PROPOSED] ORDER
FOR DEPOSITION COORDINATION**

DAILY NEWS, LP; CHICAGO TRIBUNE COMPANY, LLC; ORLANDO SENTINEL COMMUNICATIONS COMPANY, LLC; SUN-SENTINEL COMPANY, LLC; SAN JOSE MERCURY-NEWS, LLC; DP MEDIA NETWORK, LLC; ORB PUBLISHING, LLC; AND NORTHWEST PUBLICATIONS, LLC,

Plaintiffs,

v.

MICROSOFT CORPORATION, OPENAI, INC., OPENAI LP, OPENAI GP, LLC, OPENAI, LLC, OPENAI OPCO LLC, OPENAI GLOBAL LLC, OAI CORPORATION, LLC, OPENAI HOLDINGS, LLC,

Defendants.

Case No. 1:24-cv-03285-SHS
(consolidated)

Hon. Sidney H. Stein

(Hon. Ona T. Wang)

**DEFENDANTS' [PROPOSED] ORDER
FOR DEPOSITION COORDINATION**

DEFENDANTS' [PROPOSED] ORDER FOR DEPOSITION COORDINATION

Having considered the parties' briefing, the materials submitted in support thereof, and any oral argument, and good cause appearing therefor, the Court hereby **ORDERS** the following protocol for coordination of depositions:

1. This deposition coordination protocol covers depositions taken in (a) the consolidated class actions pending in the Southern District of New York (*Authors Guild et. al. v. OpenAI et. al.* (S.D.N.Y. No. 23-cv-8292) and *Alter et. al. v. OpenAI et al.* (S.D.N.Y. No. 23-cv-10211))¹, and the consolidated class actions pending in the Northern District of California titled *In re OpenAI ChatGPT Litigation*, Case No. 23-cv-03223 (*Tremblay, et al. v. OpenAI, Inc., et al.*, (N.D. Cal. No. 3:23-cv-03223); *Silverman, et al. v. OpenAI, Inc, et al.*, (N.D. Cal. No. 4:23-cv-03416); *Chabon, et al. v. OpenAI, Inc, et al.*, (N.D. Cal. No. 4:23-cv-04625)) (together, the "Class Cases"); and (b) the consolidated actions pending in the Southern District of New York titled *The*

¹ A third case originally filed as a putative class action in the Southern District of New York, *Basbanes et. al. v. Microsoft et. al.* (S.D.N.Y. No. 24-cv-84), has been stayed and is therefore not included in the aforementioned Class Cases.

New York Times Co. v. Microsoft Corp. et al., Case No. 23-cv-11195 and *Daily News et al. v. Microsoft Corp. et al.*, No. 24-cv-3285 (together, the “News Cases”)².

2. “Plaintiffs” as used herein shall refer to all plaintiffs in the Class Cases and the News Cases. “Defendants” as used herein shall refer to the OpenAI and Microsoft defendants collectively. “Parties” as used herein shall refer to all plaintiffs and defendants in the Class Cases and News Cases.

3. **Scope of Coordination.**

i) Unless otherwise agreed by the Parties or ordered by the Court, no fact witnesses will be deposed more than once, and all Parties will coordinate the date and location of depositions.

ii) Deposition testimony taken in any case subject to this agreement is usable for all purposes in each case for which the deposition has been noticed as though the testimony was given in such action, provided the deponent or the deponent’s present or former employer is a Party to the action in which the testimony is sought to be used, with each Party reserving all other objections.

iii) Before noticing a deposition of a Party or Party-Affiliated witness, the noticing Party must confer about the scheduling of the deposition with opposing counsel. Parties in receipt of a request for the deposition of a Party or Party-Affiliated witness shall make reasonable efforts to provide proposed deposition dates within 10 days of receiving the request. Parties shall make good faith efforts to accommodate reasonable requests from adverse Parties with respect to the scheduling of Party and Party-Affiliated depositions, to the extent practicable.

iv) If a Party chooses not to notice a deposition of a fact witness, that Party may not attend the deposition, question the witness, or use the deposition in that Party’s case.

² Defendants have filed a motion seeking consolidation of *Center for Investigative Reporting v. OpenAI, Inc., et al.* (S.D.N.Y. No. 24-cv-04872) (“CIR”) with the News Cases.

4. **Plaintiff Side Allotted Hours.**³ With respect to fact depositions, the following hours caps shall apply to Plaintiffs:

i) Class Cases: 240-hour-cap to be shared by the Class Plaintiffs, with a maximum of 105 hours for OpenAI witnesses, 85 hours for Microsoft witnesses⁴, and 50 hours for non-party fact witnesses.

ii) News Cases: 220-hour-cap to be shared by the News Plaintiffs, with a maximum of 85 hours for OpenAI witnesses, 85 hours for Microsoft witnesses, and 50 hours for non-party fact witnesses.⁵

iii) The hours caps set forth above include third-party witness depositions and 30(b)(6) depositions.

5. **Defendant Side Allotted Hours.** With respect to fact depositions, the following hours caps shall apply to Defendants:

i) Class Cases: 300-hour-cap to be shared by Defendants, with a maximum of 250 hours for Plaintiffs' witnesses (with Microsoft's deposition time limited to the NY Class Cases) and 50 hours for non-party fact witnesses.

ii) News Cases: 250-hour-cap to be shared by Defendants, with a maximum of 200 hours for Plaintiffs' witnesses (of which no more than 110 hours may be spent on

³ Hours caps for Party witnesses include depositions of Party-Affiliated witnesses, including former officers, directors, and/or employees of a Party. If any Party wishes to depose another Party's former officer, director, and/or employee (i.e., a Party-Affiliated witness), the deposing Party will notify the other Parties of its intention to do so prior to serving a subpoena, and any such deposition time will count toward the caps for Party witnesses described above. Counsel for the Party will promptly (and within 5 business days) confirm whether it is able to accept service of any such subpoena on behalf of the Party-Affiliated witness. Depositions of non-party fact witnesses shall proceed pursuant to FRCP 45.

⁴ Microsoft is not a party to the CA Class Cases and is not subject to deposition by the CA Class Plaintiffs unless pursuant to standard third-party deposition rules in the event a proper and enforceable subpoena is served on it therein.

⁵ If CIR is consolidated with the News Cases, 10 hours will be added to the Plaintiff Side Allotted Hours for a total of a 230-hour-cap to be shared by all News Plaintiffs, with a maximum of 90 hours for OpenAI witnesses, 90 hours for Microsoft witnesses, and 50 hours for non-party fact witnesses.

depositions of each Plaintiff group) and 50 hours for non-party fact witnesses.⁶

iii) The hours caps set forth above include third party witness depositions and 30(b)(6) depositions.

6. **Per-Witness Time Limits.** The following time limits shall apply to all fact witness depositions:

i) For Party witnesses noticed solely in their individual capacity, 8 hours of on the record time across all cases. Notwithstanding the above, and without waiver of any Party's ability to file motions under the "apex" doctrine, depositions of C-Suite executives deposed solely in their individual capacity shall not exceed 7 hours of on the record time across all cases.

ii) For Party witnesses designated to testify on 30(b)(6) topics in addition to their individual capacity, 12 hours of on the record time across all cases. 30(b)(6) deposition testimony shall occur prior to 30(b)(1) deposition testimony, and questioning during 30(b)(1) deposition shall not duplicate questioning or topics covered during 30(b)(6) deposition.

iii) Depositions of third parties are subject to the standard 7-hour limit, absent agreement by the third-party to extend the time limit or court order.

7. **Rule 30(b)(6) Deposition Notices.**

i) Class Plaintiffs will serve one 30(b)(6) notice for OpenAI and one 30(b)(6) notice for Microsoft.⁷

ii) News Plaintiffs will serve one 30(b)(6) notice for OpenAI and one 30(b)(6) notice for Microsoft.

iii) Defendants OpenAI and Microsoft will serve one 30(b)(6) notice for each distinct entity among Plaintiffs in the Class Cases and News Cases.

⁶ If *CIR* is consolidated with the News Cases, 20 hours will be added to the Defendant Side Allotted hours, for a total of a 270-hour-cap to be shared by Defendants, with a maximum of 220 hours for Plaintiffs' witnesses (of which no more than 110 hours may be spent on depositions of each Plaintiff group) and 50 hours for non-party fact witnesses.

⁷ Microsoft may only be served with a 30(b)(6) notice in the NY Class Cases and Newspaper Cases; as it is not a party to the CA Class Cases, it is not subject to a 30(b)(6) notice in those cases.

iv) No Party shall be permitted to serve successive 30(b)(6) notices, or amended 30(b)(6) notices with new topics, on the same entity absent the Parties' agreement or leave of court.

8. **Rule 30(b)(6) Deposition Time.** If any Party receiving a 30(b)(6) notice designates multiple corporate representatives for testimony, the total time for 30(b)(6) testimony of that Party will be limited to a cumulative total of 21 hours of testimony on the record across all such designated corporate representatives.

9. **Experts.** This agreement does not apply to and shall not limit the number and duration of depositions of experts. The Parties shall endeavor to negotiate in good faith a separate protocol governing expert depositions.

Entered this ____ day of _____, 2024.

IT IS SO ORDERED.

The Honorable Ona T. Wang
UNITED STATES MAGISTRATE JUDGE